

**75-5-301 Appointment of guardian for incapacitated person.**

- (1) The parent of an incapacitated person may by will, or by written instrument as provided in Section 75-5-202.5, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, or where the written instrument is filed, if prior thereto both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings. A provision contained in a person's will or written instrument appointing a guardian of his minor children is not to be considered to be an appointment of a guardian of an incapacitated adult child unless it appears from the will that this was the testator's intention.
- (2) The spouse of a married incapacitated person may by will or written instrument appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or the written instrument is filed. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.
- (3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.
- (4) On the filing with the court in which the will was probated or the written instrument was filed, of written objection to the appointment by the person for whom a testamentary or instrumental appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the nominee named by will or written instrument or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this part.

Amended by Chapter 41, 1985 General Session